

ORIGINAL**FILED**

OCT 15 2014

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST

U.S. COURT OF
FEDERAL CLAIMS

SIERRA NEVADA CORPORATION,)
)
Plaintiff,)
)
v.)
)
THE UNITED STATES,)
)
Defendant.)

Case No. **14- 994C**

Judge _____

MOTION FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Sierra Nevada Corporation respectfully moves this Court to grant declaratory judgment, or in the alternative, a preliminary injunction. The grounds for this Motion, as more fully set forth in the attached supporting Memorandum, are:

(1) The United States' decision to override the automatic stay of imposed by the Competition in Contracting Act on Contract Nos. NNK14MA74C and NNK14MA75C, awarded by the National Aeronautics and Space Administration, was illegal and void. NASA has failed to establish in its Override Memorandum that: (i) "performance of the contract is in the best interests of the United States," or (ii) "urgent and compelling circumstance that significantly affect the interests of the United States will not permit waiting for the decision of the Comptroller General concerning the protest." 31 U.S.C. §3553(d)(3)(C)(i)(I)-(II).

(2) NASA's override is arbitrary and capricious, an abuse of discretion, and is contrary to law, all in violation of the Administrative Procedures Act, 5 U.S.C.

§706(A)(2)(A). The override constitutes NASA's unreasonable decision unnecessarily and unjustifiably to direct the awardees proceed with contract performance, notwithstanding the timely GAO protest filed by Plaintiff that gave rise to CICA's automatic stay provision.

WHEREFORE, for all the foregoing reasons as more fully set forth in the attached supporting Memorandum, Plaintiff respectfully requests that the Court declare Defendant's override of CICA's automatic stay of performance on Contract Nos. NNK14MA74C and NNK14MA75C illegal and void.

In the alternative, Plaintiff respectfully requests that the Court, pending a final judgment on the matter, preliminarily enjoin the Defendant from further implementing its override of CICA's automatic stay of performance on Contract Nos. NNK14MA74C and NNK14MA75C.

Dated: October 15, 2014

Respectfully submitted,

By: 
Neil H. O'Donnell
Dennis J. Callahan

ROGERS JOSEPH O'DONNELL, P.C.
750 Ninth Street NW, Suite 710
Washington, DC 20001
Tel: (202) 777-8950
Fax: (202) 347-8429

Counsel for Plaintiff Sierra Nevada Corporation

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST

SIERRA NEVADA CORPORATION,)
Plaintiff,) Case No. _____
v.) Judge _____
THE UNITED STATES,)
Defendant.)

)

ORDER GRANTING DECLARATORY JUDGMENT

Upon consideration of Sierra Nevada Corporation's Motion for Declaratory Judgment, the entire record herein, and the law applicable thereto, it is this _____ day of October, 2014,

ORDERED, that Plaintiff's Motion is GRANTED.

Judge, U.S. Court of Federal Claims

Entered this _____ day of October, 2014

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST

SIERRA NEVADA CORPORATION,)	
)	
Plaintiff,)	Case No. _____
)	
v.)	Judge _____
)	
THE UNITED STATES,)	
)	
Defendant.)	
)	

ORDER GRANTING PRELIMINARY INJUNCTION

Upon consideration of Sierra Nevada Corporation's Motion for a Preliminary Injunction, the entire record herein, and the law applicable thereto, it is this _____ day of October, 2014,

ORDERED, that Plaintiff's Motion is GRANTED; and therefore further

ORDERED, that Defendant, its officers, employees, agents and all other persons in active concert or participation with them are enjoined from (i) further implementing Defendant's override of the automatic stay of performance imposed by the Competition in Contracting Act on Contract Nos. NNK14MA75C (Boeing) and NNKMA1474C (SpaceX) that are the subject of Protest *Sierra Nevada Corporation*, B-410485 before the U.S. Government Accountability Office ("GAO"), and (ii) allowing performance of said contracts to proceed.

ORDERED, that this injunction shall remain in effect until the Court enters a final judgment on the merits in this matter or the final resolution by the GAO of Plaintiff's pending bid protest, *Sierra Nevada Corporation*, B-410485, any subsequent corrective actions, and any further administrative or judicial review proceedings.

Judge, U.S. Court of Federal Claims

Entered this ____ day of October, 2014

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST

SIERRA NEVADA CORPORATION,)
Plaintiff,) Case No. _____
v.) Judge _____
THE UNITED STATES,)
Defendant.)

)

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be delivered, by hand, facsimile, or electronic means, on this 15th day of October, 2014, copies of (1) the Complaint, (2) Plaintiff's Application for a Temporary Restraining Order, (3) Proposed Temporary Restraining Order, (4) Motion for a Preliminary Judgment and Injunction Relief, (5) Proposed Order Granting Preliminary Injunction, (6) Proposed Order Granting Declaratory Judgment (7) Memorandum in Support of Plaintiff's Application for a Temporary Restraining Order and Motion for a Preliminary Injunction, (8) Plaintiff's Corporate Disclosure Statement, and (9) Plaintiff's Motion For Leave To File Documents Under Seal and Motion For A Protective Order on the following counsel:

- A. For the United States, the Dept. of Justice Commercial Litigation Branch;
- B. For the contracting agency, NASA, Karen M. Reilley;

- C. For awardee SpaceX, Rick Vacura; and
- D. For awardee Boeing, Scott McCaleb.

Dated: October 15, 2014

Respectfully submitted,

By:


Neil H. O'Donnell
Dennis J. Callahan

ROGERS JOSEPH O'DONNELL, P.C.
750 Ninth Street NW, Suite 710
Washington, DC 20001
Tel: (202) 777-8950
Fax: (202) 347-8429

Counsels for Plaintiff Sierra Nevada
Corporation